

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Village at North Platte  
Appellant,

v.

Lincoln County Board of Equalization  
Appellee

Case No: 14C 206

**ORDER FOR DISMISSAL WITH  
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND  
DETERMINES AS FOLLOWS:

**I. PROCEDURAL HISTORY**

A hearing on the Appellee's Motion to Dismiss was held on April 21, 2015. William E. Peters appeared at the hearing before the Tax Equalization and Review Commission ("the Commission") as legal counsel for the Village at North Platte ("the Taxpayer"). Joe W. Wright, Deputy Lincoln County Attorney, appeared telephonically on behalf of the Lincoln County Board of Equalization ("the County Board"). The Commission took notice of its case files for the purpose of the hearing on the Motion to Dismiss and received evidence and argument.

**II. STANDARD OF REVIEW**

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.<sup>1</sup> Any action of the County Board of Equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.<sup>2</sup> Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel,

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<sup>1</sup> See, Neb. Rev. Stat. 77-5013 (2014 Cum. Supp.).

<sup>2</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

consent, or conduct of the parties.<sup>3</sup> “Jurisdiction is the inherent power or authority to decide a case.”<sup>4</sup> The Commission only has that authority which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.<sup>5</sup> An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.<sup>6</sup> “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”

### III. ANALYSIS

The County Board alleged in its Motion to Dismiss that the Commission lacks jurisdiction over the subject matter of this appeal. The County Board asserts that the Taxpayer failed to comply with the statutory requirement that any protest to a county board shall contain or have attached a statement of the reason or reasons why the requested change should be made.<sup>7</sup> The County Board shall dismiss any appeal that does not contain or have attached a statement of the reason or reasons for the protest.<sup>8</sup>

The Taxpayer used Form 422, a form prescribed by the Nebraska Department of Revenue, to file its property valuation protest with the County Clerk.<sup>9</sup> The Taxpayer’s Form 422 was completed and filed with the County Clerk, with the box labeled “Reasons for requested valuation change” left blank. There were no attachments filed by the Taxpayer with the Form 422 filed with the County Clerk.<sup>10</sup>

The Taxpayer argues that the Form 422 filed in this case should be viewed in its entirety. The Taxpayer completed the portion of the Form 422 that indicates that the Taxpayer is requesting a real property valuation of \$1,000,000 for a parcel of real property assessed at \$1,881,000. The Taxpayer asserts that by requesting a lower valuation on the protest form they

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<sup>3</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

<sup>4</sup> *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

<sup>5</sup> *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

<sup>6</sup> *See, e.g., Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

<sup>7</sup> Neb. Rev. Stat. §77-1502(2) (2014 Cum. Supp.)

<sup>8</sup> Neb. Rev. Stat. §77-1502(2) (2014 Cum. Supp.)

<sup>9</sup> E1:3

<sup>10</sup> E1:1-3

are advising the County Board that the reason for the appeal is that the subject property is overvalued. The Taxpayer argues that the Form 422 filed in this case should be viewed in its entirety and thus be construed to include a “reason for the requested valuation change.”

The Statutory language in question in this appeal states:

“Each protest shall be signed and filed with the county clerk of the county where the property is assessed. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made and a description of the property to which the protest applies. If the property is real property, a description adequate to identify each parcel shall be provided. If the property is tangible personal property, a physical description of the property under protest shall be provided. If the protest does not contain or have attached the statement of the reason or reasons for the protest or the applicable description of the property, the protest shall be dismissed by the county board of equalization.” (emphasis added).<sup>11</sup>

The Taxpayer argues that by indicating a requested change it has also met the requirement for giving a reason or reasons why the requested change should be made. The Nebraska Supreme Court has held that when reading a statute, one should give effect to all parts of the statute and avoid rejecting as superfluous or meaningless any word, clause, or sentence.<sup>12</sup> The statute requires that an appeal contain a reason or reasons why the requested change should be made. A reason why a requested change should be made and a requested change are not the same thing. The Commission cannot conclude that making a requested change is the same as stating a reason why the change should be made without reading the statute in such a way as to make the requirement for a reason for the requested change meaningless. The Commission further determines that nothing else on the Taxpayer’s Form 422 could be interpreted as a reason for the requested valuation change as required by statute. When a protest does not contain a

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<sup>11</sup> Neb. Rev. Stat. 77-1520(2) (2014 Cum. Supp.)

<sup>12</sup> See, eg *ML Manager v. Jensen*, 287 Neb. 171, 177, 842 N.W.2d 566 (2014), see also, *In re Claims Against Atlanta Elev., Inc.*, 268 Neb. 598, 685 N.W.2d 477 (2004).

reason why the requested change should be made, the County Board does not have jurisdiction to hear the appeal, but rather the County Board is required to dismiss the appeal.<sup>13</sup>

An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.<sup>14</sup> “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”<sup>15</sup> The Taxpayer’s assertion that the Commission has authority to maintain jurisdiction because the Taxpayer’s Form 422 should be read to include a reason why the requested change should be made does not fall within the authority conferred upon the Commission by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act because the County Board did not have subject matter jurisdiction. Therefore, the Commission determines that it does not have jurisdiction over the appeal or petition.

#### **IV. CONCLUSION**

The Commission does not have jurisdiction to hear the above captioned appeal.

#### **ORDER**

##### **IT IS THEREFORE ORDERED THAT:**

1. The above captioned appeal is dismissed with prejudice.
2. This decision, if no appeal is filed, shall be certified within thirty days to the Lincoln County Treasurer, and the officer charged with preparing the tax list for Lincoln County as follows:

Julie Stenger  
301 N Jeffers, Rm 110A  
North Platte, NE 69101

Sue Fleck  
301 N Jeffers, Rm 102  
North Platte, NE 69101

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<sup>13</sup> See, Neb. Rev. Stat. 77-1502(2) (2014 Cum. Supp.)

<sup>14</sup> See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

<sup>15</sup> *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, 815 N.W.2d 168, 175 (2012).

as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

3. Each party is to bear its own costs in this matter.

**SIGNED AND SEALED** May 12, 2015.

**Seal**

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Robert W. Hotz, Commissioner

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Nancy J. Salmon, Commissioner